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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)	
)	
PUBLIC UTILITIES COMMISSION)	DOCKET NO. 05-0002
)	
Instituting a Proceeding to Investigate the)	
Issues and Requirements Raised by, and)	
Contained in, Hawaii Revised Statutes)	
486H, as Amended)	
_____)	

SHELL OIL COMPANY'S MOTION FOR STAY

AND

CERTIFICATE OF SERVICE

FILED
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PUBLIC UTILITIES
COMMISSION

KOBAYASHI SUGITA & GODA

CLIFFORD K. HIGA 2950-0
BRUCE NAKAMURA 6518-0
KENNETH M. NAKSONE 6942-0
999 Bishop Street, Suite 2600
Honolulu, HI 96813
Telephone No.: (808) 539-8700
Attorneys for SHELL OIL COMPANY

SHELL OIL COMPANY'S MOTION FOR STAY

Comes now Shell Oil Company ("Shell"), by and through its attorneys, attorneys, Kobayashi, Sugita & Goda, and respectfully moves the Honorable Public Utilities Commission of the State of Hawaii ("Commission") for an order staying the effect and enforcement of the Commission's Decision and Order No. 21952 filed herein on August 1, 2005 ("Order No. 21952") pending Shell's Motion For Reconsideration filed simultaneously herewith on Monday, August 15, 2005.

This Motion is made pursuant to Section 6-61-138 of the Hawaii Administrative Rules ("H.A.R."), the Rules of Practice and Procedure Before the Public Utilities Commission ("Rules"), and is supported by the Memorandum in Support attached hereto and the records and files herein which are incorporated herein by this reference.

DATED: Honolulu, Hawaii

Aug. 15, 2005



CLIFFORD K. HIGA
BRUCE NAKAMURA
KENNETH M. NAKASONE

Attorneys for SHELL OIL COMPANY

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Shell respectfully requests that the Honorable Public Utilities Commission of the State of Hawaii ("Commission") issue an order staying the effect and enforcement of the Commission's Decision and Order No. 21952 filed herein on August 1, 2005 ("Order No. 21952") pending Shell's Motion For Reconsideration filed simultaneously herewith on Monday, August 15, 2005 ("Motion For Reconsideration").

A Stay pending the Motion For Reconsideration is required because:

1. There is a strong likelihood that Shell will prevail on the merits of its Motion For Reconsideration;
2. Immediate and irreparable damage will result if a stay is not ordered; and
3. The public interest supports the granting of the stay.

II. DISCUSSION

A. Standard For Stay Pending Motion For Reconsideration

With respect to stays pending motions for reconsideration, Hawaii Administrative Rules § 6-61-138 provides as follows:

6-61-138 Effect of filing. (a) The filing of a motion for reconsideration or rehearing shall not stay a commission decision and order. However, *if a motion for a stay accompanies the motion, the commission shall act on the motion for a stay promptly. If a stay is granted, the stay shall remain in effect until disposal of the motion for reconsideration. . . .*

Haw. Admin R., § 6-61-138 (emphasis added).

In *In re GTE Hawaiian Telephone Company, Inc.*, Docket No. 7062, the Commission issued Order No. 11614 which adopts the following three-part test to motions for stay pending reconsideration.

1. Are movants likely to prevail on the merits of the motion for reconsideration?
 2. Does the balance of irreparable damage favor the issuance of a stay?
 3. Does the public interest support granting the stay?
- See 59 Haw. 156, 158, 577 P.2d at 1118.

Order No. 11614, at 2.

B. Shell Is Likely To Prevail On The Merits

Shell has compelling arguments for its Motion For Reconsideration which prove that Order No. 21952 is “unreasonable, unlawful” and “erroneous” and immediate reconsideration is appropriate. *See* Haw. Admin. R. § 6-61-137. Shell’s arguments include the following:

1. The present case is a “contested case” “required by law” (required by procedural due process rights) because of the multiple protected “property interests” at stake including but not limited to:
 - a. The property interests of gasoline marketers (e.g. Chevron, Tesoro, & Shell) including their respective real property, refining facilities, storage terminals, service stations and other investments;

- b. The property interests of HPMA's jobbers including the commercial use of their property (e.g. gasoline delivery trucks); and
- c. The property interests of rural service station owners including the commercial use of their property: even the Commission acknowledges "a high probability of service station closures in some areas due to supply cost issues, and there is a higher risk that remote locations might lose service". *See* Order 21952, at 32; *see also* Motion For Reconsideration, at 3-9;

2. Order No. 21952 does not meet the requirements of Hawaii law because it is not supported by the evidentiary record of this case:

- a. The 2004 Legislature knew it could not simply proceed with implementing the law as passed and designated the Commission to determine the feasibility and appropriateness of the proposed measures and to offer more appropriate standards if the results of its investigation warranted such action;
- b. The Commission initiated this docket to "examine the issues and requirements raised by, and contained in, HRS Chapter 486H, particularly Act 242." *See* Order No. 21525. The Commission was required to specifically conduct an analysis as to whether the Act 242 measures codified in Haw. Rev. Stat. § 486H-13 were appropriate or not;
- c. The Commission's de-facto finding and conclusion that the existing provisions of Haw. Rev. Stat. § 486H-13 are "appropriate" are not supported by the evidentiary record in this case as required by Haw. Rev. Stat. § 91-12; and
- d. In fact, there is not a single shred of evidence established in this record to support the PUC's determination that the existing Haw. Rev. Stat. § 486H-13

standards are “appropriate.” To the contrary, the only evidence adduced as to the proposed Act 242 adjustment factors indisputably show that these measures were entirely inappropriate. *See Motion For Reconsideration*, at 9-20;

3. Order No. 21952 is incomplete and too unclear because it does not provide sufficient information to calculate the gasoline cap. *See Motion For Reconsideration*, at 20-24;

4. Order No. 21952 enhances the likelihood the prices will increase. *See Motion For Reconsideration*, at 24-25;

5. The Commission must refuse to implement any gasoline price caps until all the requirements of Act 242 are met (including the mandatory legislative task force) and the risks to the neighbor island residents are properly addressed. *See Motion For Reconsideration*, at 26-29; and

6. Under Order 21952, the Commission has not addressed the problem of neighbor island gas shortages. This will likely lead to dangerous situations similar to the one on Molokai with: (1) mile-long lines; (2) waits of more than an hour; (3) tourists inconvenienced by long lines to get gasoline; (4) rationing of gasoline; (5) chaos in downtown and the main highway as a result of the long-lines; (6) dangerous situations of people filling and storing containers of gasoline; and (7) concerns in supplying emergency vehicles. *See Motion For Reconsideration*, at 29-32

Accordingly, Shell is likely to prevail on the merits of its Motion For Reconsideration.

C. Immediate And Irreparable Damage Will Likely Result If A Stay Is Not Ordered

The parties to this proceeding and others will likely suffer immediate, adverse, and irreparable harm if a stay is not granted. First, Gasoline marketers may be irreparably harmed by the deprivation of their investment backed expectations by limiting returns on their investments/property through the issuance of Order 21952. Second, Jobbers may be irreparably harmed by total deprivation of the commercial use of their property because Order 21952 does not require that such jobbers recover even their costs of distribution. Finally, rural service station owners will be irreparably harmed because “there is a high probability of service station closures in some areas due to supply cost issues, and there is a higher risk that remote locations might lose service”. *See* Order 21952, at 32; *see also* Motion For Reconsideration, at 3-9.

D. The Public Interest Supports Granting The Stay

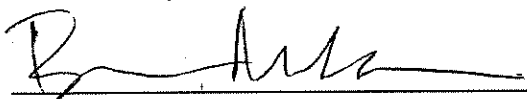
No irreparable harm to the public will occur from the stay as the cap does not guaranty lower prices. *See* Motion For Reconsideration, at 24-25. Further, there is little question that the public interest will be served by the stay as the articulated risks set forth in Order No. 21952 at pages 34 – 39 will obviously not be realized. *See* Order 21952, at 34-39.

III. CONCLUSION

Based on the foregoing, Shell respectfully requests that the Commission issue an order staying the effect and enforcement of Order No. 21952 pending the Motion For Reconsideration.

DATED: Honolulu, Hawaii

Aug. 15, 2005



CLIFFORD K. HIGA

BRUCE NAKAMURA

KENNETH M. NAKASONE

Attorneys for SHELL OIL COMPANY

CERTIFICATE OF SERVICE

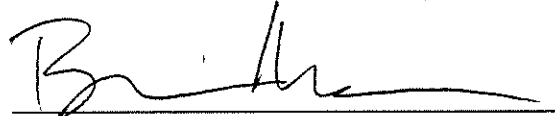
The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties in the manner described at their following last known addresses:

	<u>HAND- DELIVER</u>	<u>U.S. MAIL</u>
KEVIN M. KATSURA, ESQ. Commission Counsel Hawaii Public Utilities Commission 465 S. King Street, Suite 103 Honolulu, HI 96813	X	
JON S. ITOMURA, ESQ. Division of Consumer Advocacy Dept. of Commerce and Consumer Affairs 335 Merchant Street, Rm. 326 Honolulu, Hawaii 96813	X	
MICHAEL H. LAU, ESQ. KENT D. MORIHARA, ESQ. Davies Pacific Center 841 Bishop Street, Suite 400 Honolulu, HI 96813 Attorneys for CHEVRON U.S.A. INC.	X	
CRAIG I. NAKANISHI, ESQ. Pacific Guardian Center, Mauka Tower 737 Bishop Street, Suite 2400 Honolulu, HI 96813 Attorney for TESORO HAWAII CORP.	X	

KELLY G. LAPORTE, ESQ.
MARC E. ROUSSEAU, ESQ.
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
Attorneys for HAWAII PETROLEUM
MARKETERS ASSOCIATION

X

DATED: Honolulu, Hawaii, Aug. 15, 2005.

A handwritten signature in black ink, appearing to read "Clifford K. Higa", written over a horizontal line.

CLIFFORD K. HIGA
BRUCE NAKAMURA
KENNETH M. NAKASONE
Attorneys for SHELL OIL COMPANY